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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of EDDIE and
JEANNETTA A. STITT.

B213150

(Los Angeles County
Super. Ct. No. TD028931)

EDDIE L. STITT,

Appellant,

v.

JEANNETTA A. STITT,

Appellant.

APPEALS from a judgment of the Superior Court of Los Angeles County,
Randall F. Pacheco, Judge. Affirmed.

Law Offices of Donald L. Washington and Donald L. Washington for Jeannetta A.
Stitt.

Law Office of John C. Volz and John C. Volz for Eddie L. Stitt.

Jeannetta A. Stitt appeals from the judgment entered on reserved issues in this marital dissolution action, contending the trial court erred in refusing to set aside or declare unenforceable a spousal support modification order entered in an earlier dissolution proceeding initiated by her former husband, Eddie L. Stitt.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The First Dissolution Action

In January 2002, after nearly 11 years of marriage, Eddie and Jeannetta² separated. In November 2002 Eddie filed a petition for dissolution of marriage in San Bernardino County. After a hearing on May 5, 2003 the court ordered Eddie, who had earned \$76,105 in 2000 and \$81,877 in 2001 as a locomotive engineer, to pay Jeannetta monthly spousal support of \$2,515 retroactive to February 2003.³

On October 12, 2004 Eddie filed an application for an order to show cause to reduce his monthly spousal support obligation to \$400, contending his income in 2000 and 2001 had included significant overtime pay he no longer earned. By April 5, 2005, the date the order-to-show-cause hearing finally proceeded, spousal support arrearages of approximately \$39,000 had accrued. After reviewing the parties' income and expense statements and the prior spousal support orders, the court, on an interim basis, reduced monthly spousal support from \$2,515 to \$1,728. The court also ordered Eddie to pay \$100 per month toward the spousal support arrearages. A further order-to-show-cause hearing was set for June 27, 2005 to reevaluate the spousal support award in light of

¹ Eddie L. Stitt has filed a protective cross-appeal relating to the award of attorney fees by the trial court. Because we affirm the trial court's judgment on reserved issues, we need not address the cross-appeal.

² As is customary in family law matters, we refer to the parties by their first names for convenience and clarity. (See *In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1466, fn. 1.)

³ Both the San Bernardino dissolution action and the dissolution proceedings in Los Angeles Superior Court also involved child custody, visitation and support issues, as well as division of the parties' property. Only the question of past due spousal support is raised in this appeal.

updated income and expense information that was to be provided, to determine the effective date of any downward modification of support and to fix the exact amount of past-due spousal support Eddie owed Jeannetta. Pursuant to Eddie's request at the June 27, 2005 hearing, the matter was continued to September 26, 2005.

Although many of the details are controverted, it is undisputed that in June 2005 Eddie and Jeannetta discussed reconciling. (According to Jeannetta, Eddie approached her; according to Eddie, Jeannetta approached him.) In July 2005 the parties and their counsel executed a Stipulation re Dismissal of Action and Post-Nuptial Agreement providing in part, "[T]he parties hereby wish to reconcile and therefore dismiss all causes of action herein. It is further stipulated that until the parties move into the same residence or new matter is filed that the following temporary orders be made: [¶] 1. Commencing upon execution of this agreement, [s]pousal support shall be reduced to \$600.00 per month [¶] 2. [Jeannetta] agrees to forever waive and dismiss any arrears for [s]pousal [s]upport. [Jeannetta] and [Eddie] agree that effective as of the date of the execution of the document herein spousal support arrears shall be zero."

On August 24, 2005 Eddie filed a request to dismiss the dissolution action and "arrears for spousal support." After the court requested a proposed order reducing spousal support to zero, Eddie filed a modification of earnings assignment order for spousal support setting the arrearages at zero and terminating the then-current wage assignment order. The court signed the order on September 21, 2005. On September 23, 2005 Eddie filed a second request for dismissal of the action, including spousal support arrearages, which was entered by the clerk that day.

2. The Second Dissolution Action

On February 15, 2006, less than five months after dismissal of the San Bernardino dissolution action, Eddie filed a petition for dissolution in Los Angeles County, where both parties now lived. Jeannetta responded to the petition on April 7, 2006 and applied for an order to show cause for, among other things, guideline spousal support. In her supporting declaration, filed June 2, 2006, Jeannetta asserted Eddie had deceived her into dismissing the San Bernardino action: "I signed a Stipulation Re Dismissal [of] Action

and Post-Nuptial Agreement and a Request For Dismissal because [Eddie] lied to me and misrepresented that we were going to reconcile and that he was going to move into the same residence Based on this deception I agreed to reduce the \$1[,]782 Spousal Support Order, forgive \$39,000 in Spousal Support Arrearages with interest, and to terminate the existing Wage and Earnings Assignment Order from his employer at the Burlington Northern and Santa Fe Railway Company. [Eddie] had no intent of reconciling at the time the Stipulation was presented to me by his attorney of record and I relied on these misrepresentations and dismissed this case.” However, Jeannetta’s application for an order to show cause did not request the court to set aside the San Bernardino order reducing support arrearages to zero and to reinstate the prior order determining past due support. Although her supporting declaration estimated attorney fees that would be required for an “unwarranted Trial on the issues of the back spousal support arrearages and evaluation of the Pension/Retirement benefits that I am entitled to . . . ,” her declaration also failed to indicate that the Los Angeles court would be asked to set aside a prior order from the San Bernardino Superior Court.

a. *The motion to set aside in San Bernardino Superior Court*

A hearing on Jeannetta’s application for an order to show cause was held on July 21, 2006. Eddie and Jeannetta agreed to several of the open matters, including payment by Eddie of \$600 per month in spousal support. Although Eddie and Jeannetta apparently expressed their belief the remaining issues in the case could also be settled, they were unable to do so. (Eddie took the position the parties had reached a binding agreement on all issues, as reflected in a July 10, 2006 letter prepared by his counsel and signed by Jeannetta; Jeannetta denied the letter constituted a fully enforceable settlement agreement.) On August 7, 2006 Jeannetta filed a request for trial setting regarding, among other issues, spousal support and “spousal support arrearages [*sic*].”

Although Eddie filed a trial brief in the Los Angeles action on September 20, 2006 arguing the July 2005 post-nuptial agreement eliminating any spousal support arrearages had not been induced by his misrepresentations of his intent regarding reconciliation with Jeannetta and was fully enforceable, it appears the court at an earlier chambers

conference had questioned its jurisdiction to address the issue since the order reducing past due spousal support to zero had been entered by the San Bernardino Superior Court in the earlier, dismissed dissolution action. In a letter to the Los Angeles Superior Court dated January 4, 2007 seeking a continuance of the trial date, then scheduled for January 19, 2007, Jeannetta's counsel reported, "I reserved April 12, 2007 in the San Bernardino Superior Court, Department R15 (Judge Janet Frangie), for a Motion to set aside a stipulated dismissal in a related family law dissolution case (RFL 035681), that was filed prior to the current action. This motion will also seek reinstatement of past support arrearages, and consolidation of the two cases . . . for hearing based on Ms. Stitt's claim of intrinsic fraud, in the prior action, before Judge Frangie."

On February 8, 2007 Jeannetta filed a motion in the San Bernardino Superior Court to set aside the voluntary dismissal of that dissolution action, as well as the underlying July 2005 stipulation and post-nuptial agreement, and to reinstate the order regarding spousal support arrearages with interest. As in her supporting declaration accompanying the application for an order to show cause in the Los Angeles action, Jeannetta contended Eddie had falsely represented he wanted to reconcile and conditioned reconciliation on dismissal of the San Bernardino case and waiver of any spousal support arrearages. Jeannetta asserted Eddie had never moved into her home, changed his address or told his children from a prior relationship, who had lived with Eddie and Jeannetta during their marriage, they were reconciling.

At a hearing on May 23, 2007 the San Bernardino court expressed concern it did not have jurisdiction over the parties because they had moved to Los Angeles. The court also indicated, because a full evidentiary hearing would be required to determine if Eddie had engaged in fraud, judicial economy warranted one court—preferably the Los Angeles Superior Court—making that determination, as well as resolving the other issues in the pending dissolution action.⁴ In response to Jeannetta's argument Los Angeles was not the

⁴ Early in the hearing counsel for Jeannetta stated, "I think the Commissioner in L.A. expressed a preference to have the matter heard here." The San Bernardino court

proper court to hear testimony and determine the issue because it was the San Bernardino court's order at issue, the court explained, "Well, I agree with that. But you could argue as a trial issue that I'm entitled to A, B and C—I'm entitled to that spousal support arrears because that was a valid order because of my claim that there was fraud. So that's a trial issue you could raise. There's nothing that says you can't raise that in your L.A. action." After additional argument the court denied Jeannetta's motion on the ground it raised "trial issues that are properly heard in the pending dissolution action because an evidentiary hearing is necessary on the issue of fraud"

b. *The contested hearing in Los Angeles Superior Court*

The parties returned to the Los Angeles Superior Court for a hearing on August 15, 2007. Notwithstanding the San Bernardino court's concerns about its jurisdiction, the trial court again raised the question whether it had jurisdiction to consider the validity of the reduction of the spousal support arrearages in the San Bernardino proceeding to zero. Because the parties had stipulated to have the file from the San Bernardino action sent to Los Angeles, the court continued the trial to September 27, 2007, explaining, "[O]n that date we will be determining whether this court has jurisdiction to set aside the dismissal entered into in the San Bernardino case and whether this court has jurisdiction to characterize or make decisions about the terms of [the San Bernardino] dismissal, which, if any, of the agreements contained in the dismissal, the court can independently looking into the validity of."

On September 27, 2007 the court concluded a trial on the issue of fraud was appropriate whether or not the San Bernardino dismissal was set aside:⁵ "It does appear that [the San Bernardino court] basically said that the motion to set aside the dismissal of the San Bernardino case was to be heard as part of the trial in this case. It appears to this

responded, "Well, and I can see why. And I'm expressing a preference to have it heard in L.A. You see my court is crowded."

⁵ The court also found grounds existed for dissolution of the marriage. A minute order dated October 30, 2007 states, "Judgment as to status only is signed and filed this date."

court that the issue is not so much setting aside the dismissal as it is the continued viability of the—or the reliability at any time of the purported agreement that accompanied the dismissal. In particular, it appears that as part of setting the stage here that at this point the only actual issue to be litigated is whether the purported forgiveness of the spousal support arrearages that accrued during the San Bernardino case is valid, continues to have effect, and I’m not sure whether it matters if the San Bernardino dismissal is set aside or not. . . . So I think what we’re really litigating is the agreement, not only setting aside the San Bernardino dismissal per se.”

Trial, with testimony from Jeannetta and Eddie, proceeded on several days in September, October and December 2007. At some point the court raised the question whether the reduction of spousal support arrearages by the San Bernardino court violated Family Code section 3651, subdivision (c)(1),⁶ which provides, “a support order may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.” On October 15, 2007 Jeannetta filed a supplemental trial brief arguing the San Bernardino court lacked authority to terminate the spousal support arrearages in light of section 3651, subdivision (c)(1).

On December 18, 2007 the court announced its tentative ruling, later deemed to be its statement of decision, rejecting Jeannetta’s effort to set aside the San Bernardino orders. The court observed the San Bernardino court had likely committed legal error by reducing the spousal support arrearages to zero, “[b]ut given that the ruling has already been made on the dismissal, and if it’s error at all, it’s a legal error as opposed to jurisdictional error, that ruling is the law of the case.” With respect to Jeannetta’s claim the stipulation and post-nuptial agreement that led to dismissal of the San Bernardino proceeding had been fraudulently obtained, the court found, “I believe there was a good faith effort to reconcile. . . . It was an appropriate agreement for both parties to enter into as long as it was entered into in good faith. And I think Mr. Stitt did really want to

⁶ Statutory references are to the Family Code.

reconcile and did try to reconcile. And following the legal conclusions to the end, it results in not setting aside their order that was made in San Bernardino on September 21st, 2005.” Judgment on the reserved issues was entered on October 24, 2008.

DISCUSSION

1. The Trial Court Lacked Jurisdiction To Set Aside the San Bernardino Superior Court Order Modifying Eddie’s Obligation for Past Due Support

a. The procedure for seeking relief from a judgment in a family law case

Historically judgments in family law cases, like civil cases generally, were subject to challenge pursuant to Code of Civil Procedure section 473, which requires a motion to set aside be brought within six months of entry of judgment,⁷ or by an action or motion asserting extrinsic fraud, if filed more than six months after entry of the judgment. (See *In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 138-140; *In re Marriage of Heggie* (2002) 99 Cal.App.4th 28, 32 “[t]raditionally, set aside motions in family law court have been governed by [Code Civ. Proc., §] 473 when brought within six months after the entry of judgment, and by the common law of extrinsic fraud when brought afterwards”). In 1992 the Legislature enacted separate provisions governing the setting aside of dissolution judgments as part of the Civil Code, which were reenacted as a chapter entitled “Relief from Judgment” in the new Family Code the following year. (§§ 2120-2129; Stats. 1993, ch. 219, § 108, pp. 1615-1617; see *Kuehn v. Kuehn* (2000) 85 Cal.App.4th 824, 830; *In re Marriage of Varner*, at p. 136.) The statutory scheme authorizes an action or motion to set aside a dissolution judgment on specific grounds

⁷ Code of Civil Procedure section 473, subdivision (b), currently provides, “The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. . . .”

(see § 2122, subd. (a)),⁸ including “actual fraud” (§ 2122, subd. (a))⁹ and “[a]s to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact.” (§ 2122, subd. (e).) When, as here, relief is sought more than six months after the judgment or appealable order was entered,¹⁰ “[s]ection 2122 specifies the exclusive grounds and time limits for an action or motion to set aside a marital dissolution judgment.” (*In re*

⁸ Section 2121, subdivision (a), provides, “In proceedings for dissolution of marriage . . . the court may, on any terms that may be just, relieve a spouse from a judgment, or any part or parts thereof, adjudicating support or division of property, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based on the grounds, and within the time limits, provided in this chapter.”

⁹ In providing relief for “actual fraud” within one year of the date of discovery, section 2122, subdivision (a), eliminated the distinction between extrinsic fraud, which was a basis for setting aside a judgment even after the expiration of the six-month period specified in Code of Civil Procedure section 473, and intrinsic fraud, for example, the misrepresentation of the value of an asset, which does not deprive the disadvantaged spouse of an opportunity to fully participate in the underlying proceedings and was not a valid ground for relief from the judgment when the motion to set aside was filed more than six months after its entry. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1144, fn. 7; *Kuehn v. Kuehn*, *supra*, 85 Cal.App.4th at p. 833.) Jeannetta consistently (and properly) identified Eddie’s purported misrepresentation of his intent to reconcile with her as intrinsic fraud.

¹⁰ Jeannetta’s challenge to the orders entered in the San Bernardino dissolution proceedings in September 2005 was primarily directed to the modification order reducing spousal support arrearages to zero. That pendent lite order “‘is to all legal intents and purposes a judgment’ [citation], ‘has the effect of a judgment’ [citation], and ‘is a proceeding for a separate judgment independent of the final judgment in the action.’” (*Moore v. Superior Court* (1970) 8 Cal.App.3d 804, 809.) Thus, as a judgment—and the real source of the parties’ dispute—we need not address any issue raised by her concomitant attempt to set aside Eddie’s voluntary dismissal of the proceeding, rather than a final judgment. (Compare § 2122 [“[t]he grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section”] with Code Civ. Proc., § 473, subd. (b) [“court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his mistake, inadvertence, surprise, or excusable neglect”].)

Marriage of Rosevear (1998) 65 Cal.App.4th 673, 684; accord, *In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 87.)

- b. *The September 2005 order modifying spousal support arrearages, although arguably in excess of the San Bernardino court's jurisdiction, was not void and is properly challenged only under section 2122*

Section 3651, subdivision (c), provides, with an exception not relevant to this case, “a support order may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.” In *In re Marriage of Sabine & Toshio M.* (2007) 153 Cal.App.4th 1203 (*Sabine*) Division One of this court held section 3651, subdivision (c), precludes a trial court from modifying or forgiving accrued support payments and further held the parties to a spousal and child support order could not lawfully forgive support payments that are past due: “The principal question on appeal is whether the parties could lawfully forgive arrearages—overdue support—where the husband agreed to pay only a portion of what he owed. We conclude that such an agreement is unenforceable where it does not resolve any bona fide disputes between the parties and is offered on a take-it-or-leave-it basis.” (*Id.* at p. 1206.)

Notwithstanding Eddie's arguments that *Sabine*, *supra*, 153 Cal.App.4th 1203 is distinguishable and the September 2005 modification order resolved disputed issues regarding the arrearages and was supported by adequate consideration, it is likely the San Bernardino Superior Court acted in excess of its jurisdiction in entering the waiver order to which Eddie and Jeannetta had agreed. Nonetheless, even assuming the order was unauthorized (because it violated section 3651, subdivision (c)), it was not void and is not properly challenged by a collateral attack in Los Angeles Superior Court, rather than a motion under section 2122.

Lack of jurisdiction in the “most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.” (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288; accord, *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660

(*American Contractors*).) “When a court lacks jurisdiction in a fundamental sense, an ensuing judgment is void, and ‘thus vulnerable to direct or collateral attack at any time.’” (*American Contractors*, at p. 660; see *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196 [“in the absence of subject matter jurisdiction, a trial court has no power ‘to hear or determine [the] case.’ [Citation.] And any judgment or order rendered by a court lacking subject matter jurisdiction is ‘void on its face’”].)

“However, ‘in its ordinary usage the phrase ‘lack of jurisdiction’ is not limited to these fundamental situations.’” (*American Contractors, supra*, 33 Cal.4th at p. 661; *In re Marriage of Jackson* (2006) 136 Cal.App.4th 980, 988 [“[i]n a broader sense, lack of jurisdiction also exists when a court ‘make[s] orders which are not authorized by statute’”].) “It may also ‘be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no “jurisdiction” (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.’ [Citation.] “[W]hen a statute authorizes [a] prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction.” [Citation.] When a court has fundamental jurisdiction, but acts in excess of its jurisdiction, its act or judgment is merely voidable. [Citations.] That is, its act or judgment is valid until it is set aside, and a party may be precluded from setting it aside by ‘principles of estoppel, disfavor of collateral attack or res judicata.’ [Citation.] Errors which are merely in excess of jurisdiction should be challenged directly, for example by motion to vacate the judgment, or on appeal, and are generally not subject to collateral attack once the judgment is final unless ‘unusual circumstances were present which prevented an earlier and more appropriate attack.’” (*American Contractors*, at p. 661; accord, *People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 716, fn. 7.)

c. *Any challenge to the lawfulness of the order modifying spousal support arrearages had to be filed in the court where the order was made*

Jeannetta does not contend any unusual or exceptional circumstances prevented her from raising the section 3651 issue in a proceeding to set aside the order modifying

spousal support arrearages and to reinstate the prior support order in San Bernardino Superior Court. (In fact, it appears Jeannetta and her counsel were simply unaware of the argument until it was suggested by the bench officer presiding in the dissolution proceeding in Los Angeles Superior Court.) Such an action or motion is certainly embraced within the scope of 2122, subdivision (e), which, as discussed, authorizes the court in a proceeding for dissolution of marriage to relieve a spouse from a judgment, or portion of a judgment, adjudicating support or division of property on specified grounds, including, “[a]s to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact.”

These statutory provisions, referring as they do to “the court” in a dissolution proceeding, rather than “a court” or “any court,” plainly contemplate the requested relief will be sought, whether by filing a new, related action or a motion to set aside in the original proceeding, from the court that entered the challenged order, not by collateral attack in the superior court in a different county that happens to be hearing a new dissolution action involving the same parties. (See Code Civ. Proc., § 680.160 [for purposes of Enforcement of Judgments Law, “[c]ourt’ means the court where the judgment sought to be enforced was entered”]; cf. *Armstrong v. Armstrong* (1976) 15 Cal.3d 942, 950-951 [“The error of which plaintiffs in this case complain [regarding improper calculation of support] does not reach the power of the court to act, but concerns instead a mistaken application of law. Thus the judgment may not be collaterally attacked.”]; *Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1136 [after proceeding has been completed and judgment final, judgment may be challenged in new proceeding in different county on ground judgment is void, not voidable; “[w]e only hold that in an action to enforce a judgment rendered in county No. 1, a superior court in county No. 2 may rule that the county No. 1 judgment is void as a defense to enforcement in county No. 2”].)

Indeed, on February 8, 2007 Jeannetta filed a motion in San Bernardino Superior Court to set aside the September 2005 modification order, but based her motion solely on

Eddie's purported misrepresentations concerning his wish to attempt to reconcile with Jeannette, not the court's lack of authority under section 3651 to enter the modification order. By that time, however, even if she had raised the section 3651 issue, it would have been too late. Under section 2122, subdivision (e), an action or motion to set aside a judgment or appealable order for mistake of law must be filed within "within one year after the date of entry of judgment." (Not only did the Los Angeles Superior Court lack jurisdiction to consider a collateral attack on the modification order under section 2122 based on the San Bernardino court's mistake of law, but also Jeannetta failed to timely raise the issue in Los Angeles: She did not formally assert that ground for setting aside the September 2005 order in Los Angeles case until October 15, 2007, more than two years after the order was final.)

In sum, the trial court correctly concluded, even if the San Bernardino court violated section 3651, subdivision (c), by modifying Eddie's past-due spousal support obligation to zero, the court committed "legal error as opposed to a jurisdictional error"; and any request for relief from that order had to be timely made by action or motion pursuant to section 2122, subdivision (e), in San Bernardino Superior Court.

2. Jeannetta's Additional Challenges to the Post-Nuptial Agreement and Order Modifying Support Arrearages Were Not Properly Before the Los Angeles Superior Court

From the outset of the Los Angeles dissolution proceedings, Jeannette maintained the post-nuptial agreement and resulting orders setting support arrearages at zero and dismissing the dissolution action were the product of Eddie's misrepresentation that he wanted to reconcile with her. Following Jeannetta's filing in San Bernardino Superior Court of her motion under sections 2121 and 2122 to set aside the post-nuptial agreement and related orders for intrinsic fraud,¹¹ Judge Frankie acknowledged San Bernardino was

¹¹ Section 2122, subdivision (a), provides an action or motion to set aside a judgment for actual fraud must be filed within "one year after the date on which the complaining party either did discover, or should have discovered the fraud." Arguably, Jeannetta did not discover Eddie's "true" intention regarding their marriage until February 15, 2006, the date he filed his second petition for dissolution in Los Angeles. Accepting that

a proper forum to hear the matter. Nonetheless, the court denied Jeannetta's motion on the ground the issue of fraud could also be determined in the pending dissolution action in Los Angeles County. That was error; to the extent Jeannetta sought to set aside a San Bernardino Superior Court order and to reinstate an earlier order from the dissolution proceedings initiated in that county, the action or motion under section 2122, subdivision (a), had to be heard in San Bernardino Superior Court, unless the case was transferred to Los Angeles County pursuant to Code of Civil Procedure section 397.5 (in proceedings under Family Code, where it appears both parties have moved from the county, "the court may, when the ends of justice and the convenience of the parties would be promoted by the change, order that the proceedings be transferred to the county of residence of either party").¹² Jeannetta's proper recourse was to appeal the denial of her motion to Division Two of the Fourth Appellate District, the appellate court with jurisdiction over San Bernardino Superior Court.

The San Bernardino court's error was compounded by the Los Angeles Superior Court's acceptance of the invitation to try the fraud issue as part of the pending dissolution case following its unsuccessful attempt to have the matter heard in San Bernardino County. The trial court lacked jurisdiction to hear Jeannetta's collateral attack on the San Bernardino Superior Court orders.

For perhaps obvious reasons, in this appeal Jeannetta no longer argues the post-nuptial agreement and order modifying support arrearages were obtained by fraud—the trial court credited Eddie's testimony and found there was a good faith effort to reconcile, a finding supported by substantial evidence in the record. (See *People v. Snow* (2003) 30 Cal.4th 43, 66 [under the substantial evidence standard, credibility determinations are the

premise, Jeannetta's February 8, 2007 motion to set aside the post-nuptial agreement and related orders was timely filed.

¹² As discussed, because Jeannetta's claim was made more than six months after the challenged orders were entered and was limited to intrinsic, not extrinsic, fraud, section 2122, subdivision (a), provided the exclusive method for an action or motion to set aside the orders. (See *In re Marriage of Rosevear*, *supra*, 65 Cal.App.4th at p. 684.)

sole province of the fact finder]; *People v. Jones* (1990) 51 Cal.3d 294, 314 [“[a]lthough we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends”].) Rather, she asserts the parties’ post-nuptial agreement is vague and ambiguous because there is no acceptable definition for “wish or attempt to reconcile” and the agreement lacks legally adequate consideration. Properly phrased, Jeannetta’s assertion concerning the ambiguity of the post-nuptial agreement might qualify under section 2122, subdivision (e), as an argument to set aside the San Bernardino Superior Court orders for unilateral or mutual mistake of fact; but that contention, like her original position her agreement to the modification of support arrearages was induced by Eddie’s fraud, had to be presented to the San Bernardino court. Her arguments the post-nuptial agreement lacked legally adequate consideration and had an unlawful objective, even if properly presented in the trial court, are simply an indirect challenge to the San Bernardino court’s orders under section 3651, subdivision (c). Whether urged directly or obliquely, the Los Angeles Superior Court properly concluded it lacked jurisdiction to set aside the San Bernardino orders based on that apparent legal error.

DISPOSITION

The judgment is affirmed. Eddie Stitt is to recover his costs on appeal.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.